

**IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON**

**STATE OF WASHINGTON,**

**No. 26959-1-III**

**Respondent,**

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**v.**

**LATISHA STARR FRANCIS,**

**UNPUBLISHED OPINION**

**Appellant.**

Kulik, J. — A stolen car found at an apartment complex had a tank top in it belonging to Latisha Francis.<sup>1</sup> Ms. Francis told officers that the tank top found in the vehicle belonged to her child, that she knew the vehicle was stolen, that she knew she needed a screwdriver to start the vehicle, and that she had driven it a few times. At trial, Ms. Francis denied any knowledge of the vehicle. She was convicted of first degree possession of stolen property. Ms. Francis appeals, arguing: (1) the trial court erred by admitting hearsay statements as prior inconsistent statements, (2) the trial court erred by finding that the State established the corpus delicti, and (3) there was insufficient

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<sup>1</sup> In the record, we note different spellings for Ms. Francis's first name. For the purposes of this opinion, we will use the spelling which appears on the information.

evidence to convict her. Concluding that the trial court committed no error and that sufficient evidence supports the conviction, we affirm.

### FACTS

Spokane police officers investigated a drive-by shooting at Dutch Jake's Park in June 2007. The suspects in the shooting were Kevin Gilfoy, Christopher Summa, and Daniel Comer. Latisha Francis lived at an apartment complex. Because these suspects had been seen at Ms. Francis's apartment, the police conducted surveillance at her apartment complex.

The police had information that one of the suspects had been driving a stolen silver Dodge. Officer Gordon Ennis saw a silver Dodge in the parking lot of the apartment complex parking lot, approximately 50 to 80 feet from Ms. Francis's apartment. The car had been stolen.

While Officer Ennis was waiting for the owner of the car, he noticed pry marks on the car and saw that the ignition had been punched out and was on the floor of the back seat. Officer Ennis also found a Kleenex box and some audiotapes, which the owner identified as his own, and a child's tank top, which the owner said he had never seen before. The owner confirmed the car was his and stated that he did not know Mr. Gilfoy,

Mr. Summa, Mr. Comer, or Ms. Francis and that he had not given any of them permission to drive his car.

Detective Lonnie Tofsrud, Officer Ennis, and two other law enforcement officials asked Ms. Francis about the car and the tank top, as well as the drive-by shooting. Ms. Francis's account of what was said during this conversation differs greatly from Detective Tofsrud's and Officer Ennis's accounts.

Officer Ennis testified that when he showed the tank top to Ms. Francis, she indicated that it belonged to one of her children. At trial, however, Ms. Francis testified that the tank top did not belong to her son, or her, and that she never told Officer Ennis that it belonged to her.

Detective Tofsrud testified that Ms. Francis said: “‘They’re the ones that brought it over here. Why should I get in trouble for it.’” Report of Proceedings (RP) at 186. She explained that “they” were Mr. Gilfoy and Mr. Comer. RP at 187. Detective Tofsrud further testified that Ms. Francis indicated that she knew the vehicle was stolen, that she knew the car had to be started with a screwdriver, and that she had driven it “‘just a few’” times. RP at 188. But later Ms. Francis testified that she did not know anything about the stolen vehicle. She also denied telling Detective Tofsrud that she knew the ignition was punched out or that she had driven the vehicle.

Mr. Comer, testifying for the State, stated that he stole the car and that he had never seen Ms. Francis driving it. Detective Tofsrud interviewed Mr. Comer twice, once on June 6, 2007, after he was arrested at Ms. Francis's apartment, and again on June 8, 2007. Detective Tofsrud testified that Mr. Comer stated he had seen Ms. Francis driving the stolen car.

A jury convicted Ms. Francis of first degree possession of stolen property. Ms. Francis moved for a dismissal based on the State's failure to establish the corpus delicti of the charged crime. The trial court denied the motion, finding that sufficient evidence had been produced to establish the corpus delicti. The jury found Ms. Francis guilty of first degree possession of stolen property.

Ms. Francis appeals, arguing that the court (1) abused its discretion when it admitted hearsay statements as prior inconsistent statements, (2) erred by considering statements admitted solely for impeachment purposes when determining the sufficiency of evidence to prove the corpus delicti, and (3) erred by denying the defense's motion to dismiss the charge.

## ANALYSIS

Prior Inconsistent Statements. A trial court's decision to admit evidence is reviewed for an abuse of discretion. *State v. Nieto*, 119 Wn. App. 157, 161, 79 P.3d 473 (2003). A trial court abuses its discretion only if its decision is based on manifestly unreasonable or untenable grounds. *State v. C.J.*, 148 Wn.2d 672, 686, 63 P.3d 765 (2003).

"Hearsay" is "a statement, other than one made by the declarant while testifying at the trial or hearing, offered in evidence to prove the truth of the matter asserted."

ER 801(c). Hearsay is not admissible unless a specific exception applies. ER 802.

Extrinsic evidence of prior inconsistent statements is admissible as long as the witness is afforded an opportunity to explain or deny the statement and opposing counsel is allowed to question the witness. ER 613(b). Prior inconsistent statements are not hearsay because they are not offered for the truth of the matter asserted, but, instead, are offered to challenge the declarant's credibility.

Ms. Francis argues that Mr. Comer did not testify about whether he saw the car on June 6 or whether he saw Ms. Francis in the car with Mr. Gilfoy and Mr. Summa, and Mr. Comer did not deny making such statements to Detective Tofsrud. Ms. Francis argues that the statements made by Detective Tofsrud that addressed those particular

issues were offered for the truth of the matter asserted, not for impeachment; therefore, they were inadmissible hearsay and should not have been admitted.

Ms. Francis is correct that during the trial, Mr. Comer was not asked specifically about June 6 or about who was in the car on June 6. However, Mr. Comer stated that he had never seen Ms. Francis drive the car and he denied telling Detective Tofsrud that the first time he saw the car, Ms. Francis was driving it. Mr. Comer's prior inconsistent statement pertained to June 6 and, thus, the State's questions were proper.

Detective Tofsrud testified about the conversations he had with Mr. Comer that were prior inconsistent statements. Mr. Comer claimed that he stole the car. Detective Tofsrud testified that Mr. Comer told him that he first saw the car when he was contacted by Ms. Francis, Mr. Gilfoy, Mr. Summa, and Michelle Jeske. This statement is inconsistent with Mr. Comer claiming that he stole the car. Mr. Comer testified that he had never seen Ms. Francis drive the stolen car. However, Mr. Comer told Detective Tofsrud that at the time he saw the car, Ms. Francis was driving. This is inconsistent with his statement that he had never seen Ms. Francis driving the car.

Detective Tofsrud's statements about his interview with Mr. Comer were introduced solely to impeach Mr. Comer. The prosecutor was not trying to convince the jury that Ms. Francis was in the car with Mr. Gilfoy, Mr. Summa, and Ms. Jeske, but only

that Mr. Comer was not telling the truth when he testified. Furthermore, the jury was instructed that any prior inconsistent statements of witnesses were to be considered for purposes of credibility only.

The trial court did not abuse its discretion by admitting the impeachment testimony.

Corpus Delicti. “The corpus delicti rule protects defendants from unjust convictions based upon confessions alone which may be of questionable reliability.” *State v. Aten*, 130 Wn.2d 640, 657, 927 P.2d 210 (1996). Corpus delicti has two elements: (1) an injury or loss, and (2) a criminal act causing the injury or loss. *City of Bremerton v. Corbett*, 106 Wn.2d 569, 573-74, 723 P.2d 1135 (1986). Importantly, “[p]roof of the identity of the person who committed the crime is not part of the corpus delicti, which only requires proof that a crime was committed by someone.” *Id.* at 574.

In Washington, a defendant’s confession alone is not sufficient to prove the corpus delicti. The confession must be corroborated by other evidence. *Aten*, 130 Wn.2d at 655-56. Prima facie evidence is sufficient to establish the corpus delicti. Prima facie in this context means that there are sufficient circumstances to support a logical and reasonable inference of the facts to be proved at trial. *Id.* at 656 (quoting *State v. Vangerpen*, 125 Wn.2d 782, 796, 888 P.2d 1177 (1995)).

“The corpus delicti of most crimes requires proof only that a crime was committed by someone.” *State v. Sjogren*, 71 Wn. App. 779, 782, 862 P.2d 612 (1993). The evidence need not be sufficient to convict an individual, or even rise to the level needed to send the case to the jury. If corroborating evidence does not exist, the defendant’s confession cannot be used to establish the defendant’s guilt at trial. *Aten*, 130 Wn.2d at 656. When reviewing a corpus delicti challenge, the court should construe all facts and reasonable inferences most favorably toward the State. *State v. Pietrzak*, 110 Wn. App. 670, 679, 41 P.3d 1240 (2002) (quoting *State v. Ray*, 130 Wn.2d 673, 679, 926 P.2d 904 (1996)).

Here, there is no question that the car’s owner suffered a loss—his car was stolen. The value of the stolen vehicle exceeded the statutory minimum of \$1,500 for first degree possession of stolen property. The car was missing because Mr. Comer took the car without the owner’s permission. Hence, the owner’s testimony and Mr. Comer’s testimony established that two criminal acts occurred—theft and possession of stolen property. These facts satisfy the corpus delicti requirement.

Ms. Francis contends that the trial court relied upon Detective Tofsrud’s testimony that Ms. Francis was driving the stolen vehicle to establish corpus delicti. But corpus delicti can be found based on the testimony of the car’s owner and Mr. Comer.

Significantly, Officer Ennis testified that Mr. Comer was found at Ms. Francis's apartment and the stolen vehicle was parked nearby. And there was testimony that it was obvious that the car was stolen because the ignition had been punched out and a screwdriver was required to start the engine.

The trial court properly denied Ms. Francis's motion to dismiss for failure to prove corpus delicti.

*Sufficiency of the Evidence.* Next, Ms. Francis contends that there was insufficient evidence to support the conviction for first degree possession of stolen property. Evidence is sufficient when, after viewing the evidence in the light most favorable to the State, any rational trier of fact could have found guilt beyond a reasonable doubt. *State v. Green*, 94 Wn.2d 216, 221, 616 P.2d 628 (1980) (quoting *Jackson v. Virginia*, 443 U.S. 307, 319, 99 S. Ct. 2781, 61 L. Ed. 2d 560 (1979)). When considering the sufficiency of the evidence, all reasonable inferences must be drawn in favor of the State and interpreted most strongly against the defendant. *State v. Partin*, 88 Wn.2d 899, 906-07, 567 P.2d 1136 (1977). "Credibility determinations are for the trier of fact and cannot be reviewed on appeal." *State v. Camarillo*, 115 Wn.2d 60, 71, 794 P.2d 850 (1990).

Ms. Francis was convicted of first degree possession of stolen property. A person

is guilty of first degree possession of stolen property if he or she possesses stolen property, other than a firearm, with a value that exceeds \$1,500. *See* former RCW 9A.56.150 (1995). The issue here is whether any rational trier of fact could have found beyond a reasonable doubt that Ms. Francis possessed the stolen vehicle.

The evidence shows that the car was stolen, that it was located in an apartment parking lot approximately 50 to 80 feet from Ms. Francis's apartment, that Mr. Comer admitted to stealing the vehicle, and that he was arrested at Ms. Francis's apartment. Ms. Francis made statements that she knew about the shooting at Dutch Jake's Park, that she knew the vehicle was stolen, that the vehicle started with a screwdriver, and that a tank top located in the vehicle belonged to her child. Ms. Francis also stated that she drove the vehicle a few times.

Based on this evidence, a rational juror could find beyond a reasonable doubt that Ms. Francis possessed the stolen vehicle. Even though Ms. Francis denied any knowledge of the vehicle, determinations of credibility are for the jury and the jury found that Detective Tofsrud and Officer Ennis were more credible than Ms. Francis.

We affirm the conviction for first degree possession of stolen property.

No. 26959-1-III  
*State v. Francis*

A majority of the panel has determined this opinion will not be printed in the Washington Appellate Reports, but it will be filed for public record pursuant to RCW 2.06.040.

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Kulik, J.

WE CONCUR:

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Schultheis, C.J.

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Brown, J.